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At the Supreme Court
Sitting as the High Court of Justice

HCJ 3219/15

In the matter of:

1. ___ al-Ghul, ID No. _____
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**
Represented by counsel, Adv. Andre Rosenthal
15 Salah a-Din St., P.O.Box 19405, Jerusalem 91194
Tel: 6280458, Fax: 6221148

The Petitioners

v.

GOC Home Front Command
Represented by the State Attorney's Office

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause, why he should not revoke a removal order which was issued against petitioner 1 (hereinafter: the **petitioner**), for an additional four month period commencing from April 30, 2015 until August 29, 2015. A copy of the removal order is attached hereto and marked **P/1**.

The grounds for the petition are as follows:

1. A. Petitioner 1, ___ al-Ghul, a thirty one years old bachelor, was employed, prior to his removal from Jerusalem according to the first removal order which was issued against him on November 30, 2014 until April 30, 2015, by a public health association for six years. He lived with his family in Ras al 'Amud, Jerusalem. He intended to get married in May, but due to the issue of an additional removal order, being the subject matter of this petition, the date of the wedding was postponed.
- B. By the end of 2006 the petitioner was sentenced by the Judea military court for one year imprisonment for disorderly conduct and membership of an unauthorized association, offenses from March 2006. Since then the petitioner has not been put to trial.

About three years ago the petitioner was interrogated by the Israel Security Agency (ISA).

After the issue of the first removal order and following an objection which was submitted against the order, the petitioner was interrogated again. The interrogation was very general and superficial; he was not confronted with any specific action. Prior to the issue of the present removal order, the petitioner was not interrogated.

Petitioner's affidavit is attached and marked **P/2**.

2. Petitioner 2 is a human rights organization, which has taken upon itself to assist, among other things, Palestinians, victims of cruelty or deprivation by state authorities, including by protecting their status and rights before the authorities, either in its own name as a public petitioner or as counsel for persons whose rights have been violated.
3. On April 16, 2015, Major Pariente, respondent's legal advisor, transferred an "Invitation for a Hearing" in petitioner's matter in view of the fact that the respondent considered the possibility to extend the removal order by an additional four month period.

A copy of the above invitation is attached and marked **P/3**.

4. On April 20, 2015, the undersigned submitted his arguments for the hearing which was scheduled for April 21, 2015, at the Home Front Command before respondent's representative.

A copy of said arguments is attached and marked **P/4**. The hearing was translated for the petitioner by an interpreter on respondent's behalf.

5. On April 30, 2015, the date on which the previous order expired, written notice was given which informed that petitioner's arguments were rejected and that an additional removal order was signed, Exhibit P/1 to the petition.

A copy of said notice is attached and marked **P/5**.

6. It should be noted that additional removal orders were issued against the petitioner. Together with the first removal order which prohibited the petitioner from entering Jerusalem, the Military Commander of the West Bank issued an order which prohibited the petitioner from entering the West Bank. Said two orders were challenged in this honorable court in HCJ 978/15 and 1664/15. The petitions were heard together with two additional removal orders which were issued by the respondent against two additional residents of Jerusalem, and all petitions were denied.

In addition, the Minister of Interior exercised its power and prohibited the petitioner from leaving the country for five months. A petition against this order was filed with this honorable court in HCJ 2626/15. The hearing in said petition was scheduled by the court's secretariat for July 20, 2015.

7. To our understanding, the removal order is based only on privileged information which was gathered by the ISA. In that regard an open paraphrase was given, at the bottom of Exhibit P/3 of the petition, according to which:

"The above captioned individual is an activist in the Popular Front for the Liberation of Palestine. His activity spans over his village Ras al 'Amud and other parts of Jerusalem and includes participation in popular terror activity and building up the organizational force of the Popular Front organization."

Respondent's reply to the objection, section 9 to Exhibit P/4 of the petition, indicates that new privileged information was accumulated against the petition during the term of the previous order. The petitioner was not given any opportunity to refer to said new information in view of the fact that its content is privileged. No details regarding said new information were provided to the petitioners and the open paraphrase does not enable the petitioner to make any comments with respect thereto in view of the fact that he was not accused of any specific act or deed.

The respondents argue that prior to the issue of the order the petitioner should have been interrogated, due to the existence of new intelligence information. The petitioners will argue further that the general questioning which was carried out during the hearings towards the issue of the previous removal order, cannot be re-used.

This honorable court referred to the interrogation of the petitioner and others like him in HCJ 978/15 **al-'Awal and HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**, in section 15 of the Judgment as follows:

"...the respondents should bear in mind, that in the future, an effort should be made to conduct a serious interrogation to the maximum extent possible, as well as a hearing in advance according to an expedited schedule, and if the hearing is held in retrospect, an un-condemned necessity – without delay; and obviously, to the extent an "ordinary" criminal file may be opened rather than substitutes, it is preferable."

The respondent decided that the petitioner could not be interrogated, and according to the petitioners it renders the order at hand defective.

8. The petitioner complied with the prohibition imposed on his entry to Jerusalem and the West Bank as well as with the prohibition imposed on his exit from Israel, and no breach on his behalf was registered during the period which elapsed. The petitioners argue that this fact was not taken into account by the respondent in his decision to issue the extension order.
9. The petitioner argues that the respondent has in his possession privileged information which ostensibly ties him to the incidents which were registered among the Palestinian population in Jerusalem after the murder of the youth Muhammad Abu Khdeir.

Said incidents occurred in July 2014, about ten months ago. The previous removal order prohibited the petitioner from entering the city of Jerusalem. Therefore, the petitioners argue that the present open paraphrase which refers to petitioner's ostensible activity in his village - Ras al 'Amud – and to "popular terror activity" in Jerusalem is a sham which pertains to old privileged material which has no relevancy to the current state of affairs.

10. The petitioners argue that when no real examination of the intelligence information underlying the order is held by a professional judge, and when ISA evaluations of the credibility of the sources are relied on, the argument that due process and real judicial review were exercised over the removal order cannot be made. The professional judge is the expert in our society who can determine, using the tools in his possession, whether an individual is trustworthy or not. An ISA expert cannot replace a professional judge in his position.

The petitioners argue that the fact that the "information" derives from various sources has no relevance. For as long as the credibility of said sources has not been proven before a professional judge the information they provide should be treated with doubt.

11. The petitioner wishes to point out that his removal from his daily routine in Jerusalem, from his work and family – and particularly preventing him from assisting his ill father – for an additional period of four months are disproportionate and unreasonable.
12. The petitioners argue that even after this honorable court held once again that the Defence (Emergency) Regulations, 1945, were not revoked when the British Mandate ended, that their status among the laws of the state of Israel was firm and that they were "law" for all intents and purposes – their continued use for the purpose of limiting petitioner's fundamental rights, does not befit a state which wishes to be regarded as "Jewish and democratic."
13. In view of all of the above, the honorable court is requested to issue an order as requested and make it absolute.

Jerusalem, today May 7, 2015.

(signature)

Andre Rosenthal, Advocate
Counsel to the petitioners